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2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**

5 CENTER FOR BIOLOGICAL)
6 DIVERSITY, a non-profit corporation;)
7 SIERRA CLUB, a non-profit corporation;)
8 and PUBLIC EMPLOYEES FOR)
9 ENVIRONMENTAL RESPONSIBILITY,)
10 a non-profit corporation,)

11 Plaintiffs,)

12 v.)

13 BUREAU OF LAND MANAGEMENT)

14 Defendant,)

15 and,)

16 HIGH DESERT MULTIPLE USE)
17 COALITION, DESERT VIPERS)
18 MOTORCYCLE CLUB, SAN DIEGO)
19 OFF-ROAD COALITION, CALIFORNIA)
20 ASSOCIATION OF 4-WHEEL DRIVE)
21 CLUBS, and THE BLUE RIBBON)
22 COALITION,)

23 Defendant-Intervenors)
24

Case No: C-00-0927 WHA (JCS)

**REVISED STIPULATION AND
PROPOSED ORDER CONCERNING
INJUNCTIVE RELIEF FOR THE
PENINSULAR RANGES BIGHORN
SHEEP**

25 WHEREAS, Plaintiffs, Center for Biological Diversity, Sierra Club and Public Employees for
26 Environmental Responsibility ("Plaintiffs") filed this action on March 16, 2000, alleging that the federal
27 defendant, Bureau of Land Management ("BLM") was in violation of Section 7 of the Endangered
28 Species Act ("ESA") by failing to enter into formal consultation with the U.S. Fish and Wildlife Service
29 ("FWS") on the effects of the adoption and implementation of the California Desert Conservation Area
30 Plan, as amended, ("CDCA Plan") on threatened and endangered species. 16 U.S.C. § 1536(a)(2);

31 WHEREAS, in a Stipulation approved by the Court on August 25, 2000, BLM acknowledged
32 that because activities authorized, permitted, or allowed under the CDCA Plan may adversely affect

1 threatened and endangered species, Section 7(a)(2) of the ESA, requires BLM to consult with FWS to
2 ensure that its adoption and implementation of the CDCA Plan is not likely to jeopardize the continued
3 existence of any threatened or endangered species or to result in the destruction or adverse modification
4 of the critical habitat of any such species. 16 U.S.C. § 1536(a)(2);

5 WHEREAS, the FWS has determined that an animal species, Ovis canadensis, commonly
6 known as the Peninsular Bighorn Sheep, is entitled to protection as an endangered species under the
7 ESA. 63 Fed. Reg. 13134 (March 18, 1998);

8 WHEREAS, only approximately 400 Peninsular Bighorn Sheep remain and many of these Sheep
9 and their habitat are found within the CDCA;

10 WHEREAS, a threat to the continued existence of Peninsular Bighorn Sheep is habitat loss,
11 degradation, and fragmentation, including impacts from vehicular and non-vehicular recreational use of
12 Sheep habitat. 63 Fed. Reg. 13134, 13143;

13 WHEREAS, under the CDCA Plan, BLM allows vehicular and non-vehicular recreational use of
14 the public lands in Peninsular Bighorn Sheep habitat;

15 WHEREAS, vehicular and non-vehicular recreational use impacts can be damaging to
16 Peninsular Bighorn Sheep during the lambing season, which runs from approximately January 1 to June
17 30 each year, and during the hot or water stress season, which runs from approximately July 1 to
18 September 30 of each year;

19 WHEREAS, the Plaintiffs contend that the Dunn Road is very harmful to Peninsular Bighorn
20 Sheep and that this Road was illegally created and should be completely closed and re-vegetated;

21 WHEREAS, the Plaintiffs intend to continue to advocate by all available means, including
22 separate litigation, for the complete closure, obliteration, and restoration of the Dunn road;

23 WHEREAS, the parties agree that the presently permitted recreational use of Peninsular Bighorn
24 Sheep habitat in the CDCA may affect the Peninsular Bighorn Sheep;

25 WHEREAS, BLM acknowledges that the Creole mining operation on top of Carrizo Peak in the
26 Coyote Mountains in Imperial Country does not have a valid mining plan of operations or a valid
27 Biological Opinion for its operation;

28 WHEREAS, under Section 7 of the ESA, BLM must ensure that its adoption and implementation

1 of the CDCA Plan is not likely to jeopardize the continued existence of any threatened or endangered
2 species or to result in the destruction or adverse modification of the critical habitat of any such species;

3 WHEREAS, the parties would like to avoid unnecessary litigation of the need for an immediate
4 injunction.

5 THEREFORE, the parties agree as follows:

6 1. BLM will maintain in effect all existing voluntary recreation trail closures on public
7 lands managed by BLM in Peninsular Bighorn Sheep habitat, including the existing lambing season
8 closures of the Art Smith, North Lykken, and Boo Hoff/Guadalupe trails and Cathedral Canyon trail and
9 canyon. In addition, BLM will initiate lambing season voluntary trail closures of the Morrow, Clara
10 Burgess, Bear Creek Oasis and Dunn Road trails.

11 2. BLM will provide five (5) full time employees during the period January 1 through June
12 30 of each year for which this agreement is in effect. These five employees will be known as "Sheep
13 Ambassadors." The Sheep Ambassadors' primary duty will be to ensure the implementation of
14 voluntary closures on the public land sections of seven (7) recreational trails from January 1 through
15 June 30 each year. Sheep Ambassadors will generally occupy trailheads and patrol the trails
16 intercepting potential trail users and informing them of the voluntary closure and the reasons for it.
17 Periodically, Sheep Ambassadors will patrol high use or problem areas where trail use is most likely to
18 occur. The seven trails are the Boo Hoff/Guadalupe Trail, the Morrow Trail, the Clara Burgess Trail,
19 the Cathedral Canyon Trail (and canyon), the Bear Creek Oasis Trail, the Art Smith Trail and the Dunn
20 Road. The relevant patrol locations or trailheads are the Art Smith Trail, Clara Burgess/Lower
21 Dunn/Cathedral Canyon, the Upper Dunn and those at La Quinta Cove and Lake Cahuilla (the La
22 Quinta Cove and Lake Cahuilla trailheads serve the Boo Hoff/Guadalupe, Morrow and Bear Creek
23 Oasis trails). On weekends a law enforcement ranger will be available to support these trail monitoring
24 efforts and the Dunn Road Closure. A Sheep Ambassador will visit the Martinez Canyon Road Cherry-
25 stem on weekends primarily to monitor OHV use but should otherwise assist in monitoring higher use
26 areas. The Sheep Ambassadors will also monitor the seven trail areas for illegal OHV use that will be
27 immediately reported to law enforcement for timely response. The Sheep Ambassadors will keep daily
28 logs of their efforts to implement the voluntary closures, of their success, and of any OHV use observed.

1 BLM will provide the Plaintiffs with these daily logs and any other monitoring or other reports
2 generated by these employees upon request and/or quarterly.

3 3. Consistent with BLM Environmental Assessment CA-066-96-43, dated September 24,
4 1996 and signed November 28, 2000, BLM shall close the Art Smith Trailhead by maintaining a closed
5 gate from February 1 through June 30 of each year to minimize the disturbance to Bighorn Sheep during
6 this vulnerable period.

7 4. BLM will initiate a "hot season" or "water stress" trail signing and education program
8 from July 1 to September 30 each year. This "hot season" trail signing and education program will take
9 place on the Art Smith, Boo Hoff/Guadalupe, Bear Creek Oasis, Dunn Road, and Carrizo Canyon trails.
10 This "hot season" trail signing and education program will be implemented by placing prominent signs
11 at the following locations: (A) for the Art Smith Trail, at BLM Section 2 at least 1/2 mile southeast of a
12 slot canyon with palm oasis, and at the western boundary of BLM Section 22 in Magnesia Spring
13 Canyon; (B) for the Guadalupe Trail, at the junction with the Boo Hoff Trail; (C) for the Bear Creek
14 Oasis Trail, where the trail leaves the wash and starts up the hill (the junction with the Bear Creek
15 Canyon Trail); (D) for the Dunn Road, by the Art Smith Trail signs listed above; and (E) for Carrizo
16 Canyon, by two access points where hikers enter the Canyon from Highway 74 on BLM land. These
17 signs shall state "Sensitive Bighorn Sheep Watering Area Ahead Please Turn Around Here To Avoid
18 Disturbing Bighorn Sheep in this Area From July 1 to September 30." In addition, on the Boo Hoff
19 Trail, within 1/2 mile to either side of the "Mystery Canyon" dead-end trail, BLM shall place signs
20 reading "Sensitive Bighorn Sheep Area. Please Stay on Trail." Finally, to accomplish this "hot season"
21 trail signing and education program BLM shall maintain at least one of the Sheep Ambassadors to
22 implement this program. This "summer" Sheep Ambassador will generally patrol the trail locations
23 listed above. The summer Sheep Ambassador will keep daily logs of his/her efforts to implement the
24 hot season trail signing and education program and of his/her success. BLM will provide the Plaintiffs
25 with these daily logs and other monitoring or other reports generated by this employee upon request
26 and/or quarterly.

27 5. BLM will increase its environmental education efforts concerning the effects of
28 recreational trails on Peninsular Bighorn Sheep lambing habitat and watering areas. BLM's educational

1 efforts will be prepared in coordination with the Peninsular Bighorn Sheep recovery team and will
2 address the voluntary trail closure program described in paragraphs 1 – 3 above and the signing and
3 education program described in paragraph 4 above. BLM's efforts will include the new installation,
4 regular maintenance, and replacement of damaged or stolen signs which are on BLM managed public
5 lands, and a revised informational flyer for distribution at trailheads by the Sheep Ambassadors and for
6 placement in any existing or new BLM kiosk boxes. BLM's revised informational flyer will also be
7 available at all BLM offices throughout the CDCA and will be provided to adjacent Forest Service and
8 State Parks offices within the historic range of the Peninsular Bighorn Sheep. BLM's public education
9 campaign will also include an opinion/editorial, consistent with the Peninsular Bighorn Sheep Recovery
10 Plan. The opinion/editorial will discuss the importance of the voluntary trail closure program and the
11 importance of the Peninsular Bighorn Sheep to our natural heritage. The opinion/editorial will be
12 officially signed by BLM and distributed to English and Spanish language newspapers in Southern
13 California by March 15, 2001. BLM shall also issue at least one widely distributed press release to
14 English and Spanish language newspapers in Southern California by March 15, 2001 announcing the
15 voluntary trail closure program and BLM shall purchase several radio advertisements, from stations in
16 the Coachella Valley and Inland Empire doing the same. In addition, BLM shall prepare an
17 informational presentation or slide show on the voluntary trail closure program and present this
18 informational show to schools in the vicinity of Peninsular Bighorn Sheep habitat.

19 6. BLM will not open the gate to the parking lot for the Art Smith trail during the period
20 January 1 through June 30 of each year, and will seek the California Department of Fish and Game's
21 cooperation in keeping the gate closed during that time period.

22 7. BLM will install new signs at logical and historical access points to Carrizo Canyon from
23 the Art Smith Trail. These signs will inform the public of State closures affecting Carrizo Canyon.
24 BLM will coordinate the placement and the wording of these new signs with the California Department
25 of Fish and Game and the Plaintiffs. BLM shall install the signs by April 15, 2001.

26 8. BLM will not improve or maintain or authorize improvement or maintenance of the
27 Martinez Canyon/Cactus Spring Trail beyond the Martinez Canyon cherry-stem. BLM will not
28 authorize or permit the use of pack stock to assist in the restoration of the Martinez Canyon Cabin.

1 BLM agrees to place signs on Martinez Canyon Road and Trail, warning against illegal use of OHVs
2 and to enforce the OHV prohibition at the Wilderness boundary. BLM will coordinate the placement of
3 these new boundary signs with the Plaintiffs. Plaintiffs shall be consulted by March 15, 2001 and the
4 signs shall be in place by March 30, 2001.

5 9. The parties agree that nothing in this stipulation shall prevent BLM from cooperating
6 with responsible wildlife agencies in their trail use research, monitoring and enforcement efforts.

7 10. BLM will discuss the impacts of aircraft flights over Peninsular Bighorn Sheep habitat
8 with the Desert Manager's Group (DMG). BLM will also discuss the overflight issue with the
9 Peninsular Bighorn Sheep Recovery Team, the U.S. Fish and Wildlife Service, the Federal Aviation
10 Administration, the Department of Defense, and other appropriate governmental agencies. BLM will
11 present the views of the Peninsular Bighorn Sheep Recovery team and the results of existing studies , to
12 the overflight working group of the DMG at its next scheduled meeting and will discuss with the
13 working group at that meeting the question of whether there is a need for restrictions on overflights of
14 Bighorn Sheep habitat, including a limit on the distance above the ground for military and all other
15 overflights.

16 11. The parties agree that nothing in this Stipulation shall be construed to prohibit BLM or
17 FWS permits for research, inventory, and monitoring activities involving helicopter flights over and
18 landings on public land, so long as the flights and landings are for the purpose of legitimate research,
19 inventory, and monitoring developed in consultation with the U.S. Fish and Wildlife Service.

20 12. BLM will not approve any new lands or minerals authorizations, or modifications of any
21 existing lands or minerals authorizations, within Peninsular Bighorn Sheep habitat with the following
22 exceptions:

- 23 a. authorizations within the I-8 utility corridor;
- 24 b. exchanges or acquisitions of land designed to benefit Peninsular Bighorn Sheep;
- 25 c. authorizations that do not involve any new surface disturbance or other new
26 disturbance affecting Bighorn Sheep.

27 BLM will notify the Plaintiffs of any new proposed authorizations and any exchanges or acquisitions
28 designed to benefit Peninsular Bighorn Sheep for at least 90 days before reaching any final decision on

1 the proposed authorization, exchange, or acquisition.

2 13. BLM shall close and block the Painted Gorge Road, leading to the top of Carrizo Peak in
3 the Coyote Mountains in Imperial County, at the first practical location past or above (Northwest of) the
4 Imperial County mineral material pit, from January 1 to July 30 each year.

5 14. BLM will not issue any new or re-issue any existing special recreation or other special
6 use permits for use between January 1 and September 30 which "may affect" Peninsular Bighorn Sheep
7 within the meaning of Section 7 of the ESA.

8 15. A review of survey records for the Santa Rosa Wilderness boundary indicated the
9 possibility of a trespass by the Quarry Golf Course onto public lands. BLM will further investigate this
10 trespass and any other trespass by the Quarry Golf Course onto public lands and initiate a trespass action
11 by notice to the landowner by February 20, 2001. BLM shall pursue full restoration of the public lands
12 and removal of any Golf Course modifications from the designated Wilderness area if the trespass is
13 verified.

14 16. Concerning the Dunn Road, BLM will:

15 a. Not authorize, permit, or carry out any improvement of the Dunn Road on public
16 lands (including improvement by private parties). *BLM will require prior approval for any maintenance*
17 *of the Dunn Road which exceeds that which can be accomplished by one or two persons without the aid*
18 *of mechanized and/or motorized equipment. Major maintenance or any maintenance on public lands*
19 *involving the use of mechanized or motorized equipment must be approved prior to initiation of the*
20 *activity. In reviewing any request for maintenance under this provision, BLM shall undertake all*
21 *analyses required by the National Environmental Policy Act, the Endangered Species Act, and any other*
22 *applicable provisions of statute or regulation;*

23 b. Not grant any rights of way over the Dunn Road;

24 c. Close all gates on public lands which affect access along the Dunn Road and
25 secure them with new locks by March 15, 2001;

26 d. Repair all fences, to prevent unauthorized vehicular access to the Dunn Road on
27 the public lands adjacent to these access gates by January 30, 2001 and will construct new/additional
28 fences to prevent unauthorized access, as necessary, by October 30, 2001, and maintain them thereafter;

1 e. BLM will replace the non-BLM lock on the northernmost gate adjacent to
2 Cathedral City Cove with a BLM lock by March 15, 2001;

3 f. The BLM locks to be installed on all BLM managed gates on the Dunn Road will
4 include the following security features:

5 (1) Keys cannot be duplicated by any one other than the manufacturer of the
6 lock (patented system for which locksmiths do not possess key banks);

7 (2) Keys are sequentially numbered thereby providing for tracking efficiency;

8 (3) The locks for the Dunn Road gates will constitute a stand alone system
9 which will not interface with the commonly used BLM lock system;

10 (4) The key and lock system used on the Dunn Road gates will be such that
11 keys will be retained in the locking mechanism until the padlock is secured in the
12 closed position;

13 (5) Locks will be secured to the gate by a chain; and there will be

14 (6) A separate key system for the locks on each gate.

15 g. BLM may provide conditional access to the Dunn Road, by issuance of keys to
16 governmental entities with emergency service *or natural resource management responsibilities*. These
17 governmental entities are the U.S. Forest Service, Palm Springs Police and Fire Departments, Cathedral
18 City Police and Fire Departments, *Coachella Valley Mountains Conservancy, Riverside County Flood*
19 *Control and Water Conservation District, California Department of Fish and Game, and Agua Caliente*
20 *Band of Cahuilla Indians*. Use of the Dunn Road by these entities will be for emergency purposes only
21 with the following exceptions: The Agua Caliente Band of Cahuilla Indians may use the Dunn Road to
22 access tribal lands for the purpose of natural and cultural resource management; *the California*
23 *Department of Fish and Game may use the Dunn Road for the purpose of natural resource*
24 *management*; the U.S. Forest Service may use the Dunn Road, accessing it by the Southerly gate, for the
25 purpose of tamarisk eradication efforts *and the management of the National Forest Lands*; *the*
26 *Coachella Valley Mountains Conservancy may use the Dunn Road for the purposes of carrying out its*
27 *statutory duties*; *and the Riverside County Flood Control and Water Conservation District may use the*
28 *Dunn Road for the purposes of inspecting and maintaining its rain sensors*;

1 h. BLM may provide conditional access to non-federal landowners whose lands
2 cannot be accessed by motorized vehicle except via the Dunn Road on the following terms:

3 (1) Landowners must obtain approval from BLM for each trip on the Dunn Road.

4 (2) Generally, no more than two landowner trips a week may be permitted and
5 only one of these trips may be on a weekend. All landowner trips must enter and
6 exit from the same gate;

7 (3) A "trip" will consist of one journey in and one journey out along the Dunn
8 Road. If the destination of the trip is North of the juncture of the Art Smith Trail
9 and the Dunn Road, the trip must enter and exit from the North. If the destination
10 of the trip is South of the juncture of the Art Smith Trail and the Dunn Road, the
11 trip must enter and exit from the South.

12 (4) A "trip" may include no more than eight motorized vehicles;

13 (5) Trips must be met by a BLM ranger or Sheep Ambassador at the
14 appropriate gate. Landowners will be advised not to stop their vehicles on the
15 Dunn Road within Bighorn Sheep habitat other than when on their own property
16 or during emergencies such as vehicle breakdowns or flat tires. Landowners who
17 have demonstrated non-compliance may be denied future access;

18 (6) Keys to the locks on the gates will be loaned to the landowner and
19 returned to BLM on the next BLM business day.

20 (7) Each month, BLM may authorize a reasonable number of additional
21 landowner trips if the two trips per-week limit cannot accommodate landowner
22 needs.

23 (7) Trips by the Agua Caliente Band of Cahuilla Indians will count as
24 landowner trips unless these trips are for emergency purposes or for purposes of
25 natural and cultural resource management;

26 (8) Trips by the Agua Caliente Band of Cahuilla Indians or the U.S. Forest
27 Service for emergency purposes or for natural and cultural resource management,
28 *the California Department of Fish and Game for natural resource management,*

1 the Forest Service for tamarisk removal efforts, *the Coachella Valley Mountains*
2 *Conservancy for the purposes of carrying out its statutory duties, the Riverside*
3 *County Flood Control and Water Conservation District for the purposes of*
4 *inspecting and maintaining its rain sensors, and trips by the Palm Springs Police*
5 *and Fire Departments and Cathedral City Police and Fire Departments for*
6 *emergency purposes will not count as landowner trips, but must be reported to the*
7 BLM;

8 (9) All trips and use of specific keys will be logged and recorded by BLM.

9 BLM will provide the Plaintiffs with all trip and key records upon request and/or
10 quarterly;

11 (10) If a key is lost, BLM will notify and consult with plaintiffs regarding
12 corrective action.

13 i. No commercial use of the Dunn Road will be authorized by permit or otherwise,
14 except the current permit holder will have the right to use the Dunn Road until the current permit
15 expires on June 30, 2001;

16 j. The above limitations will not apply to trips by entities conducting legitimate
17 research, inventory and monitoring and this Stipulation will not be construed to limit or hinder
18 legitimate research, inventory and monitoring efforts as approved in consultation with the U.S. Fish and
19 Wildlife Service;

20 k. BLM will install at least two traffic counters on the Dunn Road by March 15,
21 2001. These traffic counters will be placed to ensure all vehicle trips are recorded. BLM will provide
22 that at least one of the traffic counters records the date and time on which a vehicle passes the counter.
23 All records produced by these traffic counters will be provided to the Plaintiffs upon request and/or
24 quarterly.

25 17. BLM will have a wildlife biologist, natural resource, specialist or, other appropriate staff
26 its El Centro and Palm Springs Offices attend all meetings of the Peninsular Bighorn Sheep recovery
27 team or its successor organization.

1 18. BLM will maintain in effect and enforce the existing dog closure in Peninsular Bighorn
2 Sheep habitat. BLM shall provide law enforcement in support of this dog closure and shall provide the
3 Plaintiffs with summary information concerning the number of tickets issued and the location of the
4 violations upon request and/or quarterly.

5 19. BLM will not locate a "dog use area" on the east side of California State Highway 74.
6 Before locating any new "dog use area," BLM will consult with the U.S. Fish and Wildlife Service, and
7 will seek the views of the Bighorn Institute, and the Peninsular Bighorn Sheep Recovery team
8 concerning the location of any "dog use area." Any new "dog use area" shall not be within a mile of the
9 Bighorn Institute.

10 20. Removal of the picnic tables and hitching posts on the top of Murray Hill will be
11 considered among the alternatives analyzed in the Coachella Valley Multiple Species Habitat
12 Conservation Plan amendment to the CDCA Plan.

13 21. In consideration of the actions to be taken by BLM, Plaintiffs agree that they will not
14 seek injunctive relief through this litigation with respect to the Peninsular Bighorn Sheep so long as
15 BLM complies with the terms of this stipulation. Nothing in this Stipulation shall be construed so as to
16 prevent Plaintiffs from challenging any action in the CDCA affecting Peninsular Bighorn Sheep for
17 reasons other than BLM's failure to consult on the CDCA Plan.

18 22. This Stipulation shall not be interpreted or construed as an admission by any of the
19 parties of any claim or defense in this litigation.

20 23. Nothing in this Stipulation shall be interpreted or construed as a commitment or
21 requirement that the BLM or any other federal agency obligate or pay funds in contravention of the
22 Anti-Deficiency Act, 31 U.S.C. 1341, or any other applicable provision of law.

23 24. In complying with the terms of this agreement, BLM shall be subject to all applicable
24 federal statutes and regulations, and nothing in this agreement shall be construed to require BLM to take
25 any actions in contravention of any such applicable statutes or regulations.

26 25. This Stipulation is effective immediately upon its signature as an agreement among the
27 signatories and is further effective as an Order of the Court upon its approval and entry as an Order by
28 the Court. This Stipulation is to remain in effect until BLM receives a Biological Opinion from FWS on

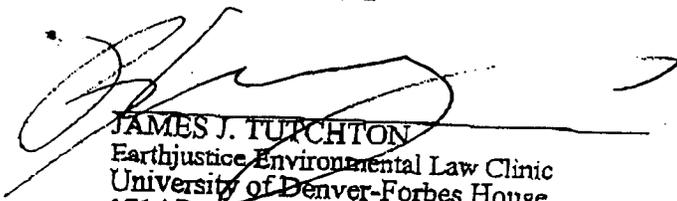
1 the effects of the CDCA Plan on Peninsular Ranges Bighorn Sheep and implements any applicable
2 terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures of
3 the Opinion that require implementation.

4 26. For good cause, any party to this stipulation may ask any other to modify this agreement.
5 Any such request for modification shall be in writing. If after 30 days the parties are unable to agree
6 upon the requested modification, the parties shall present their disagreement to the Court which may
7 modify this agreement for good cause shown.

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FOR PLAINTIFFS CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB AND PUBLIC
EMPLOYEES FOR ENVIRONMENTAL
RESPONSIBILITY

Dated: 2/28/01



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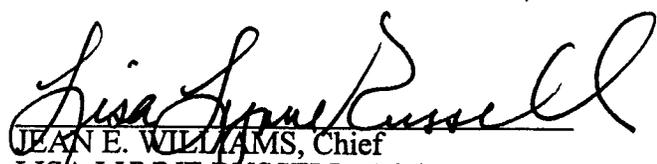
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**FOR DEFENDANT BUREAU OF LAND
MANAGEMENT**

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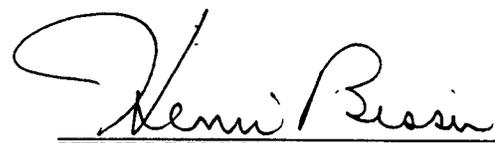
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Dated: 3/1/01



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BUREAU OF LAND MANAGEMENT
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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3
4 DATED the ____ day of _____, 2001
5

6 _____
7 WILLIAM ALSUP
8 UNITED STATES DISTRICT JUDGE
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